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CAUSE PENDING

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1898

AMELIA L. HOWARD ET AL., Plaintiffs in Error.

vs.

P. DeCORDOVA ET AL., Defendants in Error.

In Error to the Circuit Court of the United States for the Northern District of Texas at Dallas.

BRIEF AND ARGUMENT FOR THE DEFENDANTS IN ERROR

R. H. Ward
and
ASHBY S. JAMES,
Counsel for Defendants in Error.

NEWS PRINTING CO., AUSTIN, TEXAS.

No. 758.

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Statemcnt of the Nature and Result of this Suit.

In view of the fact that the plaintiffs in error have not yet filed any brief in this cause and furnished a copy to counsel for the defendants in error, it becomes necessary for the defendants in error to set forth a substantial statement of the nature and result of this cause.

This is an equity cause in which plaintiffs in error filed an original bill on the 7th day of July, 1898, against defendants

in error seeking to set aside a judgment of the District Court of Freestone County, Texas, a court of general jurisdiction of the State of Texas.

The grounds upon which the plaintiffs in error attacked the judgment of the said State Court are set forth at length in their bill, and are substantially as follows, to-wit: That the plaintiffs in error are the sole surviving heirs of one J. W. Zacharie, deceased, who was the owner of the land in controversy, and who made a contract with P. DeCordova and Jacob DeCordova, by which said P. DeCordova and Jacob DeCordova undertook to have the Manuel Riondo 11league grant of which said Zacharie was the owner, placed on the map of the State of Texas, and compromise adverse claims to same, in consideration of the agreement on the part of the said Zacharie that said DeCordovas shol,d for their services, become entitled to a one-third interest in all of the Manuel Riondo grant, which should be secured by compromise or survey for said Zacharie (Record, p. 24). It being recied in said agreement that a power of attorney had been executed of even date therewith by said Zacharie authorizing his said attorneys to represent him in the establishment of his grant, and in the compromise and sale of any and all portions thereof: (Record, p. 24). That on November 9th, 1895, the said P. DeCordova filed a suit in the District Court of Freestone County, Texas, against the unknown heirs of J. W. Zacharie and against Joseph Smolenski, whose residence was alleged to be unknown, for a partition of the Manuel Riondo grant, and that afterwards on the 8th day of September, 1896, the District Court of Freestone County, Texas, appointed R. L. Williford, a practicing attorney of said court, to represent the unknown heirs of J. W. Zacharie and Joseph Smolenski, and thereafter at a regular trial of said cause rendered a judgment in partition, setting aside in said partition proceeding which was in all things regular and in full compliance with the laws of the Stateof Texas.

the 7326 acres in controversy, and also the 192 acres in controversy. (Record, p. 15).

That in said suit in the District Court of Freestone County, Texas, service by publication was obtained upon the unknown heirs of J. W. Zacharie and Joseph Smolenski, the same being made in a newspaper not published at the County Seat, but in an obscure journal published in Freestone County, at a point remote from said County Seat, whereby no notice could be given to said heirs of their authorized agent in said County; That W. R. Boyd was the attorney for P. DeCordova in said suit, and made affidavit to procure service by publication, and that said W. R. Boyd had prior thereto on May 16th, 1892(addressed to one of defendants in error, J. S. Zacharie, a letter set forth in the record, on page 16, and that at the time of making said affidavit, both P. DeCordova and W. R. Boyd knew the names and residences of the heirs of J. W. Zacharie; that the defendants Hill, Robertson, Parker and McAdams are setting up a claim to portions of the land in controversy under deeds from W. R. Boyd with notice of the rights of the plaintiffs in error, and of the infirmity of the title conveyed by Boyd; that when service of citation by publication had been obtained in accordance with the laws of the State of Texas, and plaintiffs in error had not appeared in person or by attorney, the laws of the State of Texas provide that a new trial may be gained by the court upon an application of the defendant in the cause for good cause shown supported by affidavit at any time within two years from the date of the rendition of the judgment ;that the said J. W. Zacharie, the deceased father of the plaintiffs in error, was the owner of said eleven leagues of land in Freestone and Anderson Counties, granted to Manuel Riondo, and that he made the contract hereinbefore referred to with said Jacob and P. DeCordova; that in pursuance of this contract Jacob and P. DeCordova made some compromises or sales to those who claimed under junior grants, the exact amount

of which the plaintiffs are unable to state, but that same amounted to about ten thousand acres; that the same were made prior to 1861, and the said DeCordovas made a settlement with J. W. Zacharie in accordance with the terms of the contract aforesaid, the said DeCordovas receiving one-third of the amount for which said lands had been sold, and paying over two-thirds thereof to said Zacharie, and yet said Zacharie was charged in the partition proceeding with all of these lands, and the DeCordovas charged themselves with nothing; that on May 7th, 1860, Jacob DeCordova acknowledged in writing a settlement with J. W. Zacharie of said compromises, and released to said Zacharie all of his right in and to the Manuel Riondo grant by virtue of said contract, and that this relinquishment destroyed and annulled the said contract as to P. DeCordova also; that nothing was done thereafter by either of said DeCordovas under said contract, unless the dismissal of some suits in the United States District Court at Austin should be deemed an attempt to perform said contract by P. DeCordova until the institution of the partition suit in the District Court of Freestone County, Texas, on the 9th day of November, 1895; that said contract of February 26th, 1852, with Jacob and P. DeCordova was simply an agreement to convey to them one-third of the land of the Riondo grant that said DeCordovas might secure with a clear title by compromise or survey; that notwithstanding the plain import of said contract, said P. DeCordova and W. R. Boyd conspired and confederated together to deprive the plaintiffs in error of their land, and said W. R. Boyd filed the aforesaid suit in the District Court of Freestone County, Texas, on November 9th, 1895, and beguiled the court into the belief that said contract dated February 26th, 1852, was a deed or transfer by J. W. Zacharie to Jacob and P. DeCordova of one-third of the entire Riondo grant less the sales made thereof, and that said suit for partition was brought upon the allegation that the plaintiff, P. DeCordova, was

the owner in fee simple of a one-sixth interest in said land; that in pursuance of said confederation, the said P. DeCordova conveyed to W. R. Boyd 792 acres of land out of said Riondo grant, more specifically described by metes and bounds in said original bill and that the same was conveyed as a fee to said Boyd for prosecuting said suit in the District Court of Freestone County, Texas; that in pursuance of the partition proceeding in said District Court of Freestone, County, Texas, 7326 acres of land was set aside as the interest of said P. DeCordova, which said land is more specifically described by metes and bounds in said original bill, and a final judgment was entered in favor of said P. DeCordeva for said land; that said P. DeCordova was not entitled to a partition of the Riondo grant for the reason that he had no interest therein, and for the further reason that the said P. DeCordova had an action of specific performance upon the contract of February 26, 1852, which action plaintiffs in error allege that they believe had been abandoned by said P. DeCordova for more than 20 years, and that the same was barred by the statutes of limitation of the State of Texas, and if not barred, that the same could not have been enforced because of non-performance on his part and payment in full for his partial performance prior to 1860; that if said P. DeCordova was entitled to a partition of the unsold part of the Riondo grant, yet the partition by the District Court of Freestone County, Texas, was grossly unjust to them, because the 7326 acres set apart to P. DeCordova included all the improved and cultivated land on said grant and are the best lands in said grant, while the lands set apart to said plaintiffs in error lie largely in the Trinity River bottom, are subject to overflow, and remote from railway transportation; that about ten thousand acres of the Riondo grant had been sold or compromised and about ten thousand acres lost by prescription under junior locations, leaving about twenty-eight thousand, seven hundred and eight (28,708) acres belonging to

plaintiffs in error, and that one-sixth of this amount would be 4,784 acres, the utmost amount that said P. DeCordova could claim under said contract; that no land had been secured for plaintiffs in error by said DeCordovas out of said grant which had not been fully accounted for for to said DeCordova, and that at the date of the institution of the suit in Freestone County, plaintiffs in error did not owe P. DeCordova either any money or any land by virtue of the contract of 1852; that J. W. Zacharie, the ancestor of plaintiffs in error, so construed said contract, and sold the unsold balance of said Riondo grant to one Joseph Smolenski, estimating the number of acres so undisposed of at from twenty-seven thousand to thirty thousand acres, for which Smolenski agreed to pay fifteen thousand dollars, and gave his notes therefor; that in the deed made by said J. W. Zacharie to said Joseph Smolenski, it is provided that the vendor retains a lien on the land sold to secure the payment of said notes, and that if any of said notes remain unpaid for six months after due notice, the vendor should have a right to cancel and annul the sale, and re-enter and take possession of the land; that said notes of said Smolenski, though due for 20 or 30 years past, have never been paid, and that the plaintiffs in error have possession of them and will produce them on the trial of this cause, but that the deed to said Smolenski has been recorded in Freestone County, Texas, and the same casts a cloud upon the title of the plaintiffs in error; that the land in controversy is of the value of $2.60 per acre, making the aggregate sum of $21,100.00.

Plaintiffs thereupon prayed that the judgment of the District Court of Freestone County, Texas, and all of the conveyances made by said DeCordova and said Boyd of the land in controversy be cancelled and annulled, and that they have a writ of restitution and possession for the land described in the original bill, and that the deed made by J. W. Zacharie to J. Smolenski be

cancelled as a cloud upon the title of the plaintiffs in error. (For full text of original bill, see Record, pp. 1 to 7.).

To this original bill were appended as exhibits all the proceedings in the District Court of Freestone County, Texas, in the partition suit referred to, showing the same to be in all things regular and in full compliance with the statutes of the State of Texas.

On the 10th day of January, 1899, the plaintiffs in error filed in the Circuit Court of the United States their amended original bill, setting forth substantially the same facts contained in their original bill, and containing some immaterial allegations of additional fraud on the part of W. R. Boyd and P. DeCordova, all of which will be found in said original bill on pages 20 to 23 of the record, and attaching thereto the original agreement between Zacharie and DeCordovas (Record p. 24) and also the conveyances sought to be cancelled (Record pp. 26 to 34) and also the original deed from J. W. Zacharie to Joseph Smolenski, (Record, pp. 34 to 37) together with all of the notes executed by said Smolenski in the payment of the land sold to him by J. W. Zacharie (Record, pp. 39 to 42.)

Defendants in error on the 10th day of January, 1894, filed in the Circuit Court of the United States the following demurrer, to-wit: "These defendants respectfully by protestation not confessing or acknowledging all or any of the matters and things in said plaintiffs' amended bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show that: First, it appears from the face of plaintiffs' amended bill that the bill seeks to set aside, cancel and annul the judgment of the District Court of Freestone County, Texas, and that this court has no jurisdiction or power to cancel, set aside or annul the judgment of a State Court, said court having jurisdiction both over the subject matter and the persons in said suit, said suit being a partition suit and the proceeding one in rem. Second, the amended bill shows upon its

face that the object of the bill is to obtain a new trial in this court in cause No. 1960, tried and determined in the District Court of Freestone County, Texas, as shown by the exhibits to the bill under and in accordance with Art. 1375 of the Revised Statutes of the State of Texas; that this proceeding is but a continuation of said suit, and this court has no jurisdiction of the same, but the District Court of Freestone County alone has jurisdiction thereof. Third, that the judgment of the District Court of Freestone County, Texas, is valid and binding upon all of the parties to this suit, and this court has no jurisdiction, power or authority to review or to cancel and annul the same for the pretended fraud set out in plaintiffs bill or for any other cause therein stated. (Record, p. 43.)

The defendants in error also filed the following special demurrers to the several portions of the amended bill therein referred to, to-wit: First, they demur to that part of said bill which refers to the alleged contract made on the 26th day of February, 1852, between Jacob DeCordova and P. DeCordova and J. W. Zacharie, and say that the same is insufficient because said contract is not set forth so that this court can construe and determine the same, and because said bill shows that said contract was read in evidence in the said suit by the exhibits to plaintiffs' bill, and was by said court construed, and the construction put upon the same is binding upon plaintiffs in this cause, and this court has no power to reverse the action of said court in that regard. Second, they demur to that part of said amended bill which sets up the statutes of limitation as to DeCordova's right to maintain the partition suit in Freestone County, Texas, and the allegation that the contract had been abandoned by him, and also the allegation attacking the fairness of said partition in said court as to the quantity and quality of the land awarded by the decree of partition, and they say that each and all of the matters were entirely within the jurisdiction of said District Court of Free-

stone County, Texas, and the action of said court in regard thereto was and is binding upon these plaintiffs and on this court, and that this court has no jurisdiction or power to revise the action of said court, as is clearly shown by all of the allegations of said bill. (Record, p. 44.)

This cause then came on for a hearing in the said Circuit Court of the United States for the Northern District of Texas at Dallas, before the Hon. E. R. Meek, judge, upon the demurrers of the defendants in error to the amended bill filed in this cause, and thereupon the said Circuit Court rendered a judgment dismissing the bill of the plaintiffs in error for want of jurisdiction of the matter in controversy, decreeing all costs against them, from which judgment the plaintiffs in error have prosecuted their writ of error in this court upon the following assignments of error: First, that the bill shows that the Circuit Court of the United States at Dallas had jurisdiction of the subject matter in controversy. Second, that the bill shows that the matter in dispute exceeds exclusive of interest and costs the sum of five thousand dollars. Third, that the bill shows that the controversy is between citizens of different States. Fourth, that the bill shows that the proceedings in said court in the case of P. DeCordova vs. the unknown heirs of J. W. Zacharie were unknown to the complainants through the fraud of respondent, there being service by publication only upon complainants in said suit in the said court, until long after the rendition of the judgment therein; that there was no personal citation of them, and no appearance by them as parties to said proceeding. Fifth, that the bill shows on its face that it is an original proceeding upon new facts not disclosed in the proceedings in the State Court attacking the judgment of the said court for fraud in the procurement thereof by the respondents, P. DeCordova and W. R. Boyd, and not a bill seeking to review the judgment of the State Court for any irregularity or error therein.

PROPOSITIONS COUNTER TO FIRST ASSIGNMENT OF ERROR OF PLAINTIFFS IN ERROR.

First—The jurisdiction of a United States Court is dependent upon citizenship, and an averment of residence is insufficient, but there must be an allegation of the citizenship of the defendants in order to confer jurisdiction upon the court.

Second—Where there are two defendants in a United States Court who are citizens of different States, the court will not have jurisdiction of the cause, and therefore the residences of the various defendants must be alleged in order to show jurisdiction in the court.

STATEMENT.

Plaintiffs in error allege in their original and amendsd bills that all of the defendants are citizens and inhabitants of the State of Texas, except Joseph Smolenski, who is alleged not to be an inhabitant of, or found within the district where the suit is filed (Record, p. 1). The residence and citizenship of Smolenski are not alleged anywhere in either bill to be in the State of Texas or any other state; nor is his residence alleged to be unknown. This action is a bill in equity to which Smolenski was a necessary party in order to enable plaintiffs in error to divest title out of him, and thereby in any event entitle them to a recovery against the other defendants. (See allegation as to Smolenski's title, Record, p. 6.)

AUTHORITIES.

Smith vs. Lyon, 133 U. S. Spr. Court, p. 315, bottom p. 635 Co-op. Ed.

Timmons vs. Eylton, 139 U. S. Spr. Court, p. 378, bottom p. Co-op. Ed.

ARGUMENT.

The bill of complainants alleges that P. DeCordova is a citizen of Travis County, Texas, in the Western district of Texas, and that the other defendants are citizens of Freestone County, Texas, in the Northern District of Texas, except J. Smolenski, who is not alleged to be a citizen and inhabitant of any State, the allegation of the bill being as follows: "Who is not an inhabitant of or found within this district." No service appears in the record upon said Smolenski, and no answer is found in his behalf. There must certainly be some allegation showing such citizenship in Smolenski as would entitle this bill to be maintained. This is a proceeding in equity, and Smolenski is a necessary party, because he is entitled to have the right to come in and perfect his title if it is defective by the payment of his notes, alleged to remain unpaid, and the judgment of the District Court of Freestone County, Texas, could not even by proper proceeding in that court have been reviewed by the plaintiffs in error herein without making Smolenski a party to that suit in order to reinvest title in the plaintiffs in error. The bill does not allege that J. Smolenski's residence is unknown, but on the contrary, the allegation of the bill implies that it is known, because it is averred that he is not an inhabitant of the district in which the bill is filed. If Smolenski be a citizen of Louisiana, the Circuit Court had no jurisdiction, because he and the rest of the defendants would then be citizens of different States.

PROPOSITIONS COUNTER TO THE FOURTH AND FIFTH ASSIGNMENTS OF ERROR OF THE PLAINTIFFS IN ERROR:

First—The amended bill filed by plaintiffs in error in the trial court shows on its face that the Circuit Court of the United States at Dallas, Texas, had no jurisdiction of the subject matter in controversy.

Second—Where the judgment of a State Court of competent

jurisdiction is rendered upon a service by publication regular in all things, and in full compliance with the statutes of the State in which it is rendered, the Circuit Court of the United States has no jurisdiction to cancel or set aside said judgment upon a bill in equity therein attacking same upon the grounds of fraud, when a method of procedure is provided by the laws of the State, which method is still open to the party attacking the judgment.

STATEMENT.

It appears from the allegations of the amended and original bills of the plaintiffs in error and the exhibits attached thereto showing all the proceedings had in the District Court of Freestone County, Texas, (Record, pp. 8 to 16) that the judgment of partition rendered therein is a valid and binding judgment of a court of competent jurisdiction in the State of Texas. There is no pretense that there are any irregularities in said proceedings, save and except the allegation that the service of citation by publication was published in a paper remote from the County Seat of Freestone County, Texas, but it appears from the exhibit set out in plaintiffs' original bill that this publication was made in the Wortham Vindicator, a newspaper published in the County of Freestone, and was therefore a publication in full compliance with the law. (Record, p. 11.)

AUTHORITIES.

Revised Statutes of Tex., Arts. 1235 and 1236. 1375

Revised Statutes of Tex., Arts. 1504A. to 1504F.

Pierre Nougue vs. Emery Clapp, 101 U. S. Spr. Court, p. 551, bottom p. 1026 Co-op. Ed.

John Randall et al. vs. Jacob Howard, 67 U. S. Spr. Court, p. 585, bottom p. 269, Co-op. Ed.

Marshall vs. Holmes, 141 U. S. Spr. Court, 589, bottom p. 870, Co-op. Ed.

Simmons vs. Saul, 138 U. S. Spr. Court, p. 439, bottom p. 1054, Co-op. Ed.

ARGUMENT.

It is respectfully submitted that the bill of complainants is wholly without any equity, and states no facts that could in any event authorize a Circuit Court of the United States to interfere with a judgment rendered by the District Court of Freestone County, Texas, nearly two years before the filing of the original bill herein. The judgment of the State Court was based upon a proceeding in every respect regular and in strict compliance with the statutes authorizing it.

The plaintiffs in error were alleged in the original suit to be unknown, but the statutes of the State of Texas authorized service by publication in all cases where the defendants were non-residents, as well as where they were unknown, and it appears from the allegations in the bill of the plaintiffs in error itself, that when this suit was filed they were all citizens of the State of Louisiana, and therefore, even if P. DeCordova or his attorney, W. R. Boyd, had known the places of their residence, it was not incumbent upon them to serve them personally in the State of Louisiana.

The allegation contained in the bill that a fraud was perpetrated by reason of the publication of the service in a paper not published at the County Seat of Freestone County, Texas, certainly in no event could avail these plaintiffs in error, because the statute of the State of Texas authorizing such service only requires publication in any paper published at any point in the County where the suit is filed, and the record attached to the bill of the plaintiffs in error shows that this publication was made in accordance with the statute in a paper published in the town of Wortham, in the County of Freestone. The District Court of Freestone County, therefore, acquired full and complete jurisdiction of this cause, and had a right to decide all the questions which are now sought to be reviewed by this separate and distinct proceeding in the Circuit Court of the United States, and its judgment, until reversed, is binding upon every other court.

The bill filed in this cause seeks to bring in review various matters and questions of fact as well as of law which were passed upon in the progress of the suit in the District Court of Freestone County, and it is now sought in the Circuit Court of the United States to cancel and annul the decree of partition based upon evidence heard by the trial judge of a separate and distinct jurisdiction. This is a direct and positive interference with the original authority of a State Court.

If there was error in the proceedings of the State Court, as alleged in the bill, the same could have been reviewed by an appeal or writ of error within the time provided for by the laws of this State, but this remedy has not been pursued. If the judgment of the District Court of Freestone County, Texas, was not supported by the evidence, as alleged in the bill, then this could have been reviewed upon appeal, as a statement of facts was properly filed and is attached as an exhibit to the bill of the plaintiffs. (See Record, p. 12.)

In the case of Marshall vs Holmes, 141 U. S. Spr. Court, 589 bottom p. 870, Co-op. Ed., Mr. Justice Harlan, in the latter part of the opinion states the correct rule which must be applied to cases of this character. In discussing the case of Nougue vs. Clapp, the learned judge says: "Here the resemblance between that case and the one before us ends, for in that case it did not appear, nor was it alleged that the facts constituting the fraud were not before the rendition of the decree within the knowledge of the party seeking its annulment, of could not have been discovered in time to bring them in some appropriate mode to the attention of the court while the decree was within its control, for aught it appears that suit was brought simply to obtain a rehearing in the Circuit Court of the United States sitting in equity of issues that were or by proper diligence could have been fully determined in the suit at law in a State Court. The relief there asked could not have been granted consistently with the rule that

equity will not interfere with a judgment at law even where the party has an equitable defense, if he could, by the exercise of diligence have availed himself of that defense in the action at law to which he was a party. This requirement of diligence is as it ought to be enforced with strictness."—Arts. 1504 A. to 1504 E. of the Revised Statutes of the State of Texas, provide the procedure by which a defendant may be sued in a Texas court who is a non-resident or whose residence is unknown. Under these articles of the statute, this suit was brought and properly conducted to a final judgment in strict compliance therewith, all of which fully appears from the exhibits attached to the original bill of the plaintiffs in error.

Arts. 1235 and 1236 of said Revised Statutes, prescrie the manner in which service shall be had in cases of this character. Art. 1375 of the Revised Statutes of the State of Texas, provides that in all cases in which judgment has been rendered on service of process by publication where the defendant has not appeared in person, or by an attorney of his own selection, a new trial may be granted by the Court upon an application of the defendant for good cause shown, supported by affidavit filed within two years after the rendition of such judgment. The judgment of the District Court of Freestone County, Texas, was rendered on the 28th day of September, 1896, and the original bill in this cause was filed on the 7th day of July, 1898, less than two years after the rendition of the judgment sought to be atacked in this proceeding. It, therefore, appears that the District Court of Freestone County, Texas, under the laws of the State of Texas, was still open to the plaintiffs in error for a review and correction of the judgment therein rendered.

Under the laws of the State of Texas, this judgment did not become absolutely final until two years had elapsed after its rendition. The courts of Texas, therefore, were open to the plaintiffs in error for the assertion of any right they might have had, and

a method of procedure was prescribed by the statutes of that State by which the judgment against them could be reviewed, corrected and set aside. Under Art. 1375 of the Revised Statutes of Texas, the suit sought to be maintained in the Circuit Court of the United States is really but a continuation of the original suit filed in the District Court of Freestone County, Texas, and that court was the proper jurisdiction in which to continue the proceeding and review the action of the trial judge. This honorable court has already passed upon the question of the power of a State by statute to provide for the adjudication of titles to real estate upon a citation by publication against unknown persons and non-residents.

In Arndt vs. Griggs, 134 U. S. Spr. Court, p. 316 bottom p. 918 Co-op. Ed., it has been held that a State has such power, and that the procedure established by the State in this respect is binding upon Federal Courts.

In this State it has been prescribed that such actions can be maintained, and that service by publication upon non-residents and unknown persons shall be sufficient; that an attorney shall be appointed by the trial judge to represent such defendants, and that no judgment by default shall be taken, but that the evidence shall be heard by the court, and a statement thereof shall be reduced to writing and filed with the court, and the judgment shall be rendered thereupon, and it is further provided that this judgment shall not absolutely be final until two years shall have elapsed, but that such non-residents and unknown persons may at any time within said period of two years, upon proper cause shown by affidavit, have this judgment set aside, and a new trial granted them. This being true, and the courts of Texas being open to the plaintiffs in error, the procedure established by the State must be held to be binding upon Federal Courts, and the plaintiffs must be required to resort to the State Courts in accordance with their procedure to establish their rights.

(Simmons vs. Saul, 138 U. S. Spr. Court, 439, bottom p. 1059 Co-op. Ed.

If the doctrine contended for by plaintiffs in error could be maintained, it would have the effect of depriving the defendants in error of the right to have the State Court, which rendered the judgment in their favor, review its own judgment in a case where at the time of the filing of the bill, the said scribed in such specific cases as the one in which the judgment was rendered. The effect of the bill in this case and the District Court of Freestone County was still open to them and of now seeking to annul this judgment by a separate suit in another jurisdiction.

It is earnestly insisted that the Circuit Court of the United Sates had no jurisdiction of this cause, and that the action of the trial judge in dismissing the bill was in all things correct.

R. H. Ward

Counsel for Defendants in Error.

Ashley S. Lanier